SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	§ § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

OFFICE OF PUBLIC UTILITY COUNSEL'S POST-HEARING INITIAL BRIEF

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276

Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402
Tucker Furlow
Senior Assistant Public Counsel
State Bar No. 24060897
Chris Ekoh
Senior Managing Public Counsel
State bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 787112397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

June 17, 2021

426

TABLE OF CONTENTS

I. Introduction/Summary [Preliminary Order ("PO") Issues 1, 2, and 3] 1

II. Invested Capital - Rate Base [PO Issues 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22] 2

A. Generation, Transmission, and Distribution Capital Investment [PO Issues 4, 5, 10, 11, 13, 14, 15, 16] 2
1. Dolet Hills Power Station [PO Issues 67, 68, 69, 70, 71] 2
a. Establishment of a Dolet Hills Rate Rider 3
b. 25 Year Amortization of the Remaining Undepreciated Value 5
c. Oxbow Mine Reserves 7
d. Dolet Hills Lignite Company 8

C. Accumulated Deferred Federal Income Tax [PO Issues 20] 9
2. Excess ADFIT 9

E. Regulatory Assets and Liabilities [PO Issues 19, 21, 22, 41, 50] 11
1. Self-Insurance Reserve [PO Issue 19 and 40] 11

III. Rate of Return [PO Issues 4, 5, 8, 9] 12

A. Overall Rate of Return, Return on Equity, Cost of Debt [PO Issue 8] 12
1. Return on Equity ("ROE") 12

IV. Expenses [PO Issues 1, 14, 24, 29, 30, 32, 33, 40, 41, 42, 44, 45, 46, 49, 72, 73, 74] ... 14

A. Transmission and Distribution O&M Expenses [PO Issue 14, 24] 14
5. Distribution Vegetation Mgmt Expense & Program Expansion [PO Issue 27] 14

C. Labor Related Expenses 15
1. Payroll Expenses 15
2. Incentive Compensation 18
a. Short-Term Incentive Compensation 18
i. Known Short-Term Incentive Compensation ("STI") 18
ii. STI Payments for Union Employees 19
3. Severance Costs 22

E. Purchased Capacity Expense 23

VI. Functionalization and Cost Allocation [PO Issues 4, 5, 52, 53, 55, 56, 57, 58] 26

B. Class Allocation [PO Issues 53, 58] 26
1. Company Class Allocation Proposal 26
2. COVID-19 Pro-Forma Adjustment 28

XI. Conclusion 29

SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	§ § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING INITIAL BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, respectfully submits this initial post-hearing brief and shows the following:[1]

I. Introduction/Summary [Preliminary Order ("PO") Issues 1, 2, and 3]

In its application filed on October 14, 2020, Southwestern Electric Power Company ("SWEPCO" or the "Company") proposed to increase its annual Texas retail revenues by $90,199,736 or 26.03% over its adjusted Test Year revenues (exclusive of fuel).[2] SWEPCO also seeks an adjustment to the Dolet Hills Power Station ("Dolet Hills") retirement date from 2046 to no later than December 31, 2021.[3] To offset the remaining balance of Dolet Hills, SWEPCO proposes using excess Accumulated Deferred Federal Income Taxation ("ADFIT"), and to amortize any undepreciated value of Dolet Hills over four years.[4] SWEPCO also seeks approval to create a self-insurance reserve of $3,560,000, with an annual accrual of $1,689,700.[5] Related

[1] Note: OPUC's Initial Brief follows the agreed briefing outline adopted by the parties and omits issues which OPUC does not address in its initial brief. OPUC reserves the right to address in its reply brief any issues raised by the parties in their initial briefs.

[2] SWEPCO Ex. 1 (Rate Filing Package) at bates 11. Note: All page number references will be in native format unless indicated otherwise.

[3] *Id.* at bates 12-13.

[4] *Id.*

[5] *Id.* at bates 14.

to the self-insurance storm reserve, SWEPCO requests the deferral of Hurricane Laura Transmission and Distribution restoration costs as a regulatory asset to be offset by the monthly accruals of the proposed self-insurance storm reserve.[6] SWEPCO also requests the approval of annual vegetation management expenses of $14.97 million, which is an increase of $5 million over the test year vegetation management expense.[7]

OPUC recommends that the Public Utility Commission of Texas ("Commission") reject SWEPCO's proposed rate treatment of Dolet Hills, reject SWEPCO's proposed increase in annual vegetation management expense, and approve SWEPCO's creation of a self-insurance storm reserve with a lower amount than the amount requested by SWEPCO. OPUC also recommends specific disallowances to SWEPCO's proposed revenue requirement and makes recommendations relating to cost allocation and rate design.

II. Invested Capital - Rate Base [PO Issues 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22]

A. Generation, Transmission, and Distribution Capital Investment [PO Issues 4, 5, 10, 11, 13, 14, 15, 16]

1. Dolet Hills Power Station [PO Issues 67, 68, 69, 70, 71]

Dolet Hills is a 650 megawatt ("MW") lignite coal-fired generation unit located southeast of Mansfield, Louisiana and jointly owned by SWEPCO, Cleco Power, LLC, Northeast Texas Electric Cooperative, Inc., and Oklahoma Municipal Power Authority.[8] SWEPCO owns 262 MW of Dolet Hills' total generation capacity.[9] Dolet Hills went into commercial operation in 1986

---

[6] *Id.* at bates 14 – 15.

[7] *Id.* at bates 17.

[8] SWEPCO Ex. 4 (Direct Testimony of Thomas P. Brice) at 5.

[9] *Id.* at 6.

with a stated useful life of 60 years, resulting in a planned retirement date of 2046.[10] Dolet Hills is fueled by lignite mined from the nearby Dolet Hills and Oxbow Reserves (collectively, the "DH Mines").[11] SWEPCO determined in early 2020 that, due to force majeure events in 2017 and 2018 and increases in lignite production costs, the economically recoverable reserves at the DH Mines were depleted and the DH Mines and Dolet Hills should be retired by the end of 2021.[12] As a result, SWEPCO now proposes to amortize the remaining undepreciated value of Dolet Hills in advance of the original twenty-five year retirement date.[13] SWEPCO also proposes to go beyond the newly proposed retirement date of 2021.[14] SWEPCO now seeks to amortize Dolet Hills over a four-year period.[15] Additionally, SWEPCO proposes using the balance of unprotected excess ADFIT and the refundable portion of protected ADFIT to reduce the amount of the undepreciated balance to be recovered by SWEPCO's proposed accelerated depreciation.[16] OPUC recommends the following changes to the proposed rate treatment of Dolet Hills by SWEPCO:

a. Establishment of a Dolet Hills Rate Rider

First, as presented by OPUC witness Ms. Constance Cannady, OPUC proposes to remove Dolet Hills asset and operations and maintenance ("O&M") costs from base rates and instead place Dolet Hills into a rate rider that will remain in effect only as long as the generation plant continues to provide service to the public, which has been estimated by SWEPCO to be through December

---

[10] OPUC Ex. 1 (Direct Testimony of Constance T. Cannady) at 16:12 – 13.

[11] SWEPCO Ex. 4 at 5:19 – 21.

[12] *Id.* at 6:19 – 21.

[13] *Id.* at 8:3 – 4.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 7:15 – 8:7.

31, 2021.[17] In contrast, SWEPCO's proposal would allow the Company a recovery both *of* and *on* the plant well beyond Dolet Hills' retirement date, when the generation plant is no longer used and useful in providing service to the public.[18]

While OPUC is unaware of whether the Commission has approved a rider of this nature in the past, OPUC believes that the creation of a rate rider for Dolet Hills is warranted in light of some of the circumstances surrounding the Company's proposed Dolet Hills retirement. As noted by SWEPCO Witness Mr. Thomas Brice, one of the usual conditions for a post-test year adjustment of known and measurable rate base decreases is that the generation plant to be removed from base rates must be "removed from service, mothballed, sold, or removed from the electric utility's books prior to the rate year".[19] A utility is required to initiate a base rate proceeding within four years of the Commission's final order in its most recent base rate case.[20] The Commission issued a Final Order on Rehearing in SWEPCO's most recent base rate case in Docket No. 46449 on March 19, 2018.[21] Accordingly, the four year deadline for SWEPCO to file its next rate case is March 19, 2022, well after the Company's proposed planned retirement of Dolet Hills on December 31, 2021.

SWEPCO determined in early 2020 that Dolet Hills would be retired by December 31, 2021.[22] SWEPCO is not required to initiate a base rate proceeding until March 19, 2022, four years after the Commission's Final Order on Rehearing in Docket No. 46449 and three months after the

---

[17] OPUC Ex. 1 at 11:10 – 12:1.

[18] *Id.* at 12:1 – 6. *See also* 16 Texas Administrative Code ("TAC") § 25.231 (b)(1)(A).

[19] SWEPCO Ex. 33 (Rebuttal Testimony of Thomas P. Brice) at 8:13 – 18. *Citing* 16 TAC § 25.231 (c)(2)(F)(iii)

[20] 16 TAC § 25.246(c)(1)(A).

[21] Public Utility Commission Staff ("Staff") Ex. 47 (Docket No. 46449, Order on Rehearing).

[22] SWEPCO Ex. 4 at 6:19 – 21.

Company's proposed retirement date of Dolet Hills.[23] SWEPCO's proposal to recover Dolet Hills in base rates, while the generation plant is retired by December 31, 2021, would result in the Company's customers paying full cost for over three years for a generation plant that is no longer used and useful in providing service to the public .[24] If SWEPCO had chosen to update its base rates in March of 2022, Dolet Hills would have been retired and removed from the Company's base rates pursuant to 16 TAC § 25.231(c)(2)(F)(iii)(II).[25]

SWEPCO's decision to seek an increase in its base rates ahead of schedule should not burden the Company's ratepayers for three years with payments on Dolet Hills, especially when it is no longer used and useful in providing service to the public.[26] Additionally, before the Company filed its Rate Filing Package ("RFP") on October 31, 2020,[27]the Company knew in early 2020 that Dolet Hills would need to be retired by December 31, 2021.[28] Accordingly, OPUC recommends that the Administrative Law Judges ("ALJs") find that the use of a rate rider to recover the Company's Dolet Hills' costs through the actual retirement date of December 31, 2021 is appropriate under the circumstances presented in this proceeding.

b. 25 Year Amortization of the Remaining Undepreciated Value

SWEPCO proposes to amortize the remaining undepreciated value of Dolet Hills over a four-year period.[29] SWEPCO acknowledges that the accelerated depreciation schedule of 4 years

---

[23] Staff Ex. 47.

[24] OPUC Ex. 1 at 12:1 – 6.

[25] 16 TAC § 25.231(c)(2)(F)(iii)(II).

[26] OPUC Ex. 1 at 12:1 – 6.

[27] SWEPCO Ex. 1 (2020 SWEPCO Rate Filing Package).

[28] SWEPCO Ex. 4 at 6:19 – 21.

[29] *Id.*at 8:3 – 4.

versus 25 years would have a significant impact on SWEPCO's base rates.[30] SWEPCO proposes using the balance of unprotected excess accumulated deferred federal income taxes ("Excess ADFIT") and the refundable portion of protected ADFIT as an offset to the accelerated depreciation.[31]

OPUC recommends that the undepreciated value of Dolet Hills, following the end of the Dolet Hills rate rider and the determination of the actual amount collected through the rate rider, should be amortized over a 25-year period, which is consistent with the original estimated useful life and retirement date of Dolet Hills, absent any offsets.[32] In a similar situation, in Docket No. 46449[33], the Commission approved an early retirement date for SWEPCO's Welsh Unit 2, but the Commission ordered that the remaining value of Welsh Unit 2 be recovered over a 24-year period in accordance with the generation plant's original planned retirement date.[34] The Commission's treatment of the Company's Welsh Unit 2 supports OPUC's recommended treatment of Dolet Hills. Like Welsh Unit 2, Dolet Hills will be retired approximately 25 years ahead of its scheduled retirement date in 2046.[35] In order to avoid the inevitable rate shock that would be triggered by a compressed depreciation schedule, OPUC recommends that the remaining value of Dolet Hills be amortized, absent any offsets, over a 25-year period in accordance with the originally scheduled retirement date of 2046.[36]

---

[30] *Id* at 7:8 – 11.

[31] *Id*. at 7:15 – 4.

[32] OPUC Ex. 1 at 14:18 – 15·2

[33] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing (Mar. 19, 2018).

[34] Staff Ex. 47 at FOF 70 ("It is reasonable for SWEPCO to recover the remaining undepreciated balance of Welsh unit 2 over the 24-year remaining lives of Welsh units 1 and 3.").

[35] OPUC Ex. 1 at 16:12 – 13.

[36] *Id*. at 19:7 – 11.

c. Oxbow Mine Reserves

SWEPCO proposes to recover the $16,576,181 total company investment in the Oxbow Mine through base rates,[37] which would not only provide a return *of*, but also a return *on* the Company's Oxbow Mine investment. As aforementioned, Oxbow Mine ceased operations in May of 2020.[38] The rate period for the current rate case began on March 18, 2021.[39] Thus, the Oxbow Mine was "*removed from service*, mothballed, sold, or removed from the electric utility's books *prior to the rate year*."[40] The Oxbow Mine cessation of operations represents a known and measurable adjustment to the Company's base rates and should be recognized as such.

In Docket No. 46449, SWEPCO represented that its investment in the Oxbow Mine and the decision to retrofit Dolet Hills would extend the useful life of Dolet Hills.[41] As Ms. Cannady points out in her Direct Testimony, "[t]he Oxbow mining operations closed approximately two years after the Rebuttal Testimony of Mr. Brice in Docket No. 46499, where he provided definitive statements concerning the sufficiency of the reserves."[42] SWEPCO's continued operation of Dolet Hills was tied directly to Oxbow Mine.[43] Because Dolet Hills and the Oxbow Mine are intertwined, it is appropriate to tie the amortization of the Company's remaining value of its Oxbow Mine investment to the proposed 25-year amortization period for Dolet Hills. OPUC, therefore, recommends that the recovery of SWEPCO's Oxbow Mine investment be limited to a return of the investment as of the end of the test year over the remaining 25-year depreciable life

[37] SWEPCO Ex. 6 (Direct Testimony of Michael A. Baird) at 47:13 – 14.

[38] OPUC Ex. 1 at 26:12.

[39] SWEPCO Ex. 36 (Rebuttal Testimony of Michael A. Baird) at 18:11.

[40] 16 TAC § 25.231(c)(2)(F)(iii)(II) (emphasis added).

[41] OPUC Ex. 1 at 26:8 – 11.

[42] *Id.* at 26:14 – 16.

[43] *Id.* at 24:1 – 3.

of Dolet Hills.[44] While the Oxbow Mine ceased operations in May of 2020, [45] the Commission has previously found that the Company's investment in the Oxbow Mine is prudent.[46] Therefore, OPUC does not oppose SWEPCO's recovery of its Oxbow Mine investment as of the end of the test year. To the extent that any of these costs are already recovered through the Company's fuel factor, OPUC recommends that the base rate treatment only include costs that are not currently recovered in the Company's fuel factor.

Accordingly, OPUC recommends that the ALJs recognize SWEPCO's cessation of operations at the Oxbow Mine as a known and measurable adjustment under 16 TAC § 25.231(c)(2)(F)(iii)(II) and remove the Company's Oxbow Mine investment of $16,576,181 from any computation of rate base on which a return would be applicable. This amount should be amortized over a 25-year period to mirror the original retirement date of Dolet Hills.

d. Dolet Hills Lignite Company

SWEPCO has chosen to include equity and taxes amounting to $1,418,666 on a total company basis and $524,292 on a Texas retail jurisdiction basis related to the Dolet Hills Lignite Company ("DHLC").[47] DHLC is a "wholly-owned lignite mining subsidiary of SWEPCO."[48] DHLC ceased operations in June 2020.[49] Similar to the Oxbow Mine, because DHLC has ceased operations and is no longer providing service to SWEPCO's customers, the removal of equity and taxes related to DHLC is a known and measurable adjustment under 16 TAC § 25.231(c)(2)(F)(iii)(II). OPUC, therefore, recommends the removal of $1,418,666 on a total

[44] *Id.* at 26:18 – 27:2.

[45] *Id.* at 26:12.

[46] *Id.* at 26:5 – 11.

[47] *Id.* at 27:9 – 10.

[48] SWEPCO Ex. 1 at Bates Page 4632.

[49] OPUC Ex. 1 at 27:17.

company basis and $524,292 on a Texas retail jurisdiction basis related to DHLC equity and taxes from the Company's requested base rates.

C. Accumulated Deferred Federal Income Tax [PO Issue 20]

2. Excess ADFIT

As explained by SWEPCO witness Mr. David Hodgson, excess ADFIT arose due to the federal government's change in the corporate tax rate from 35% to 21% in the 2017 Tax Cuts and Jobs Act ("TCJA") as SWEPCO collected rates from its customers based on the previous 35% corporate tax rate, while paying the new 21% corporate tax rate to the federal government.[50] SWEPCO is proposing to use the excess ADFIT to offset the undepreciated balance of Dolet Hills that SWEPCO proposes to collect from its customers through an accelerated depreciation schedule.[51]In accordance with SWEPCO's proposed Dolet Hills retirement, the Company proposes to use the entire balance of unprotected excess ADFIT as an offset to the accelerated depreciation of Dolet Hills, along with the protected excess ADFIT that is eligible for refund to its customers.[52]

These excess funds represent overpayments by the Company's customers that were collected through the Company's rates as a result of the corporate tax rate change..[53] These funds should be returned to SWEPCO's customers in a direct and transparent manner through a refund or credit in the customers' electricity bills, rather than used to offset the accelerated depreciation of Dolet Hills.[54] OPUC recommends that the balance of eligible protected excess ADFIT be

[50] SWEPCO Ex. 17 (Direct Testimony of David A. Hodgson) at 21:8 – 16.

[51] *Id.* at 22:17 – 21.

[52] OPUC Ex. 1 at 52:15 – 53:4.

[53] *See* SWEPCO Ex. 17 at 21:8 – 16.

[54] OPUC Ex. 1 at 11:6 – 8.

refunded to the Company's customers through a one-time credit in the customers' electricity bills within the first 60 days of the effective date of the Company's rates approved by the Commission in this proceeding.[55] OPUC also recommends that the balance of unprotected excess ADFIT be returned to the Company's customers through a tax refund rider during the first two years from the effective date of the Company's rates approved by the Commission in this proceeding.[56]

Accordingly, OPUC recommends that the ALJs reject SWEPCO's proposed use of excess ADFIT to offset the depreciation of Dolet Hills, and instead, approve the refund of excess ADFIT in a two-fold manner. First, OPUC recommends a one-time refund on the Company's customers' electricity bills for the amount of eligible protected excess ADFIT, totaling approximately $26.5 million on a company-wide basis.[57] Second, OPUC recommends that the balance of unprotected excess ADFIT, totaling $84.8 million on a company-wide basis, be returned to customers through a separate tax return rider, effective for two years from the effective date of the Company's rates approved by the Commission in this proceeding.[58] The one-time refund and tax return rider should be calculated using the updated Texas retail jurisdictional allocation factor of 36.94% used by OPUC Witness Ms. Cannady, rather than the 2017 allocation factor of 35.01% used by SWEPCO, which only captures the jurisdictional allocation as a snapshot in time when the TCJA was passed by the federal government.[59] The tax return rider should include an additional monthly carrying

---

[55] *Id.* at 53:7 – 10.

[56] *Id.* at 53:10 – 13.

[57] SWEPCO Ex. 36A (Workpapers to the Direct Testimony of Michael A. Baird) at MAB-2R.

[58] *Id.*

[59] *See* OPUC Ex. 6 (Schedule CTC-3). OPUC Ex. 7 (Schedule CTC-3A). OPUC Ex. 20 (Schedule CTC-12). *See also* SWEPCO Ex. 36A at MAB-2R.

charge equal to the Weighted Average Cost of Capital ("WACC") computed monthly based on the WACC approved by the Commission in this proceeding.[60]

E. Regulatory Assets and Liabilities [PO Issues 19, 21, 22, 41, 50]

1. Self-Insurance Reserve [PO Issues 19 and 40]

SWEPCO requests approval for the creation of a self-insurance storm reserve with a target reserve amount of $3,560,000.[61] OPUC does not oppose the Company's creation of a self-insurance storm reserve, but believes the numbers used in SWEPCO's simulation model should be updated to reflect actual costs, resulting in a slightly lower target reserve amount of $3,180,000.[62]

SWEPCO modeled potential storm damages using storm damage numbers from the previous 20 years.[63] The largest single event in that time period was the 2000 ice storm, which was estimated by SWEPCO Witness Mr. Gregory Wilson to have caused approximately $14.63 million in storm damages.[64] The second largest storm in that time period was a 2019 storm that caused storm damages of $6.41 million.[65] However, in his numerous iterations of modeling simulations, SWEPCO witness Mr. Wilson used storm damage numbers that are significantly higher than the two largest storms in the last 20 years, including some storm damage forecasts of over $20 million.[66] In response, OPUC witness Ms. Cannady recommends capping the amount of forecasted storm damages at $6.41 million, which is equivalent to the largest known amount of

[60] OPUC Ex. 1 at 53:16 – 54:6.

[61] SWEPCO Ex. 28 (Direct Testimony of Gregory S. Wilson) at 4:16 – 21.

[62] OPUC Ex. 1 at 45:11 – 16.

[63] *Id.* at 46:13 – 18.

[64] *Id.* at 45:19 – 46:1.

[65] *Id.* at 46:1 – 3.

[66] *Id.* at 46:3 – 8.

storm damages recorded for the aforementioned 20-year time period.[67] The amount of storm damages recorded for the 2000 ice storm was an estimate of damages, not a known cost.[68] Substituting Ms. Cannady's recommended cap on the storm damages in SWEPCO's model would reduce the target storm reserve to $3,180,000.[69] Accordingly, OPUC recommends that SWEPCO's self-insurance storm reserve, if approved by the Commission, be set at a target reserve of $3,180,000 based on known historical storm damages.

III. Rate of Return [PO Issues 4, 5, 8, 9]

A. Overall Rate of Return, Return on Equity, Cost of Debt [PO Issue 8]

1. Return on Equity ("ROE")

SWEPCO requests an overall rate of return of 7.22% based on:

- a proposed cost of long-term debt of 4.18%;
- a proposed ROE of 10.35%;
- a proposed long-term debt ratio of 50.63%; and
- a proposed equity ratio of 49.37%.[70]

Staff and Intervenors contest SWEPCO's proposed ROE, cost of long-term debt, and overall rate of return.[71] Specifically, Staff and Intervenors recommend a lower overall rate of return based on a lower ROE and cost of long-term debt.[72] OPUC agrees with Staff and Intervenors that the Company's proposed ROE should be rejected by the Commission.

---

[67] *Id.* at 46:19 – 47:7.

[68] *Id.* at 47: 5 – 6.

[69] *Id.* at 47:12.

[70] SWEPCO Ex. 1 at 4 - 5.

[71] *See* CARD Ex. 4 (Direct Testimony of J. Randall Woolridge). *See also* Staff Ex. 1 (Direct Testimony of Mark Filarowicz). *See also* TIEC Ex. 3 (Direct Testimony of Michael P. Gorman).

[72] *Id.*

Staff and Intervenors' pre-filed direct testimonies reflect slightly differing recommendations on the appropriate ROE, cost of long-term debt, and overall rate of return for SWEPCO. For ease of reference, Staff and Intervenors' recommendations are summarized below.

Witness	Component	Cost	Weighting	WACC
J. Randall Woolridge (CARD)[73]	Debt Equity Overall	4.18% 9.00%	50.63% 49.37%	2.11% 4.44% 6.56%
Mark Filarowicz (Staff)[74]	Debt Equity Overall	4.08% 9.225%	50.63% 49.37%	2.07% 4.55% 6.62%
Michael P. Gorman (TIEC)[75]	Debt Equity Overall	4.18% 9.15%	50.63% 49.37%	2.11% 4.52% 6.63%

OPUC agrees with Staff and Intervenors' recommendations for a significantly lower ROE than SWEPCO's proposed ROE of 10.35%.[76] The independent analysis of three expert witnesses has determined that an appropriate ROE for SWEPCO, based on the Company's individual circumstances, is in the range of 9.0% to 9.225%.[77] CARD witness Dr. Randall Woolridge notes the trend of declining ROE levels, stating that "[t]he authorized ROEs have declined from over 10.0% a decade ago to 9.40% in 2020."[78] TIEC witness Mr. Michael Gorman arrived at a range of 8.90% - 9.5%, with a midpoint of 9.15% based on multiple analyses and models that "reflect observable market evidence, the impact of Federal Reserve policies on current and expected long-term capital market costs, an assessment of the current risk premium built into current market

[73] CARD Ex. 4 at 4.

[74] Staff Ex. 1 at 28, 31, and 32.

[75] TIEC Ex. 3 at 5-6.

[76] SWEPCO Ex. 1 at 4 – 5.

[77] CARD Ex. 4 at 4. *See also* Staff Ex. 1 at 28, 31, and 32. *See also* TIEC Ex. 3 at 5-6.

[78] CARD Ex. 4 at 15:11 - 12.

securities, and a general assessment of the current investment risk characteristics of the electric utility industry and the market's demand for utility securities."[79]

The analyses of three separate expert witnesses point to an appropriate ROE well below SWEPCO's proposed 10.35% ROE. Based on this analysis, OPUC supports an ROE in the range of 9.0% to 9.225% and believes that SWEPCO's proposed ROE of 10.35%is not reasonable based on the expert witness testimonies in the evidentiary record.

IV. Expenses [PO Issues 1, 14, 24, 29, 30, 32, 33, 40, 41, 42, 44, 45, 46, 49, 72, 73, 74]

A. Transmission and Distribution O&M Expenses [PO Issues 14, 24]

5. Distribution Vegetation Management Expense & Program Expansion [PO Issue 27]

SWEPCO requests an additional $5 million for vegetation management expense, bringing their total vegetation management expense to $14.57 million, an increase of over 50% from the previously approved $9.57 million.[80] OPUC does not believe that SWEPCO has demonstrated a need for such a significant increase in its vegetation management expense.[81]

According to OPUC witness Ms. Cannady:

> "... a review of the Company's historical System Average Interruption Frequency Index ("SAIFI") and System Average Interruption Duration Index ("SAIDI") does not demonstrate that a more than 50% increase in the level of annual vegetation

[79] TIEC Ex. 3 at 54.

[80] OPUC Ex. 1 at 48: 5 – 7.

[81] *Id.* at 48:16 – 17.

management spending will produce similar reductions on a system-wide basis…"[82]

SWEPCO's previous increases in vegetation management expense have not necessarily correlated to improved SAIFI and SAIDI results.[83] SWEPCO claims that this is due to new policies regarding safety and tree trimming.[84] According to OPUC witness Ms. Cannady, SWEPCO has failed to provide any supporting documentation to demonstrate how increased vegetation management spending will correlate to improved SAIFI and SAIDI scores under SWEPCO's new safety and tree trimming policies.[85] Accordingly, since SWEPCO failed to demonstrate the positive correlation between the additional vegetation management expense and better SAIFI and SAIDI scores, OPUC recommends that the ALJs reject SWEPCO's request for an additional $5 million in vegetation management spending, unless the Company demonstrates a positive correlation between the additional funding and better SAIFI and SAIDI scores.

C. Labor-Related Expenses

1. Payroll Expenses

OPUC proposes that SWEPCO and American Electric Power Service Corporation ("AEPSC") payroll should be annualized as of October 31, 2020, resulting in a decrease to SWEPCO's proposed base rates of $4,480,512 on a total company basis and $1,686,106 on a Texas retail jurisdiction basis.[86]

[82] *Id.* at 49:14 – 17.

[83] *Id.* at 50:6 – 7.

[84] *Id.* at 50:13 – 16.

[85] *Id.* at 50:17 – 51:2.

[86] *Id.* at 33:1 – 14.

SWEPCO proposes a 3.5% salary increase to the test year end base payroll expense for SWEPCO employees and an increase in AEPSC charges to SWEPCO based on the test year end headcount of AEPSC employees.[87] OPUC does not oppose the proposed 3.5% salary increase. However, OPUC has concerns regarding the use of test year end employee headcounts for SWEPCO and AEPSC, because the test year end headcounts are not representative of the conditions likely to prevail going forward.[88]

Following the test year, SWEPCO and AEPSC offered a retirement package to employees between June 8 and July 6, 2020.[89] A total of 190 employees (1 SWEPCO and 189 AEPSC) took the retirement package.[90] OPUC witness Ms. Cannady provides that "[b]ecause the retirement incentive package was offered after the test year, and because there was a material number of employees who accepted the retirement incentive package, the employee headcount at the end of the test year is no longer an appropriate headcount on which to annualize base payroll expense."[91]

In response to Staff Request for Information ("RFI") No. 5-27, SWEPCO provided its most recent annualized payroll for both SWEPCO and AEPSC as of October 31, 2020.[92] Using the most recent annualized base payroll information available increases SWEPCO's base payroll by $544,300 on a total company basis and $199,282 on a Texas retail jurisdiction basis, inclusive of the pay raise actually given by SWEPCO to it employees.[93] As Ms. Cannady states in her Direct Testimony, "[f]or AEPSC employees, annualization of AEPSC payroll billed to SWEPCO as of

---

[87] *Id.* at 31:9 – 14.

[88] *Id* at 31: 17 – 18.

[89] *Id.* at 31:18 – 32:2.

[90] *Id.* at 32. 2 – 3.

[91] *Id.* at 32: 3 – 7.

[92] *Id.* at 32: 9 – 13. *See also* OPUC Ex. 29 (SWEPCO Response to Staff RFI 5-27).

[93] OPUC Ex. 1 at 32: 13 – 19.

October 31, 2020 results in a significant reduction to the amount of AEPSC payroll billed to SWEPCO that was originally proposed by the Company."[94] The retirement of AEPSC employees as a result of the offered retirement package following the test year results in a total reduction of $4,480,512 ($1,686,106 for the Texas retail jurisdiction) to the Company's proposed adjustment to AEPSC payroll billed to SWEPCO.[95] Even OPUC's proposed reduction likely does not encompass the full scope of all 190 post-test year employee retirements. However, the October 31, 2020 annualized payroll does provide an updated measure that likely encompasses some of the employee retirements and incorporates SWEPCO's pay raises, yielding a more accurate picture of the Company's actual payroll expense closer in time to the beginning of the rate year.[96]

The retirement package offered between June 8 and July 6, 2020, and its acceptance by 189 AEPSC employees, represents a material known and measurable adjustment to the Company's annualization of base payroll following the end of the test year.[97] More contemporary information is available regarding employee headcounts and pay levels that reflects much of the necessary adjustment as of October 31, 2020, following the end of the test year but prior to the beginning of the rate year.[98] Therefore, OPUC recommends that the ALJs require annualization of base payroll for AEPSC payroll expense as of October 31, 2020, resulting in a decrease to the Company's proposed base rates of $4,480,512 on a total company basis and $1,686,106 on a Texas retail jurisdiction basis.[99]

---

[94] *Id.* at 33:1 – 3.

[95] *Id.* at 33:3 – 14.

[96] *Id.* at 34:2 – 7.

[97] *Id.* at 31:17 – 32:7.

[98] *See* OPUC Ex. 29.

[99] OPUC Ex. 1 at 33:7 – 14.

2. Incentive Compensation

a. Short-Term Incentive Compensation

i. Known Short-Term Incentive Compensation ("STI")

In accordance with OPUC witness Ms. Cannady's testimony, OPUC recommends the removal of STI compensation amounts that were not known and measurable from SWEPCO's proposed rate increase.[100] Approximately 75% of SWEPCO's proposed STI compensation was awarded based on 2019 performance in March 2020, which OPUC does not contest.[101] OPUC, however, opposes the remaining 25% of SWEPCO's proposed STI compensation for 2020 performance, which was based on estimates at the time the Company's RFP was submitted in October of 2020 and not awarded until March of 2021.[102]

16 TAC § 25.231(b) states in part, "[i]n computing an electric utility's allowable expenses, only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered…".[103] SWEPCO's use of the estimated 25% for the 2020 performance level assumed that all employees would be paid at 100% of target amounts when STI compensation was actually awarded in March 2021, but as of November 2020, the Company had only achieved 85% of the target.[104] In assuming the full 100% target, SWEPCO estimates the STI compensation payments to be awarded in March 2021 for 2020 performance.[105] These estimates were for a future STI compensation payment that was not part of the historical test year, which ended on March 31,

---

[100] *Id.* at 36:15 – 38:8.

[101] *Id.* at 36:19 – 21.

[102] *Id.* at 36:18 – 37:7.

[103] 16 TAC § 25.231(b).

[104] OPUC Ex. 1 at 37:14 – 18.

[105] *Id.* at 37:11 – 14.

2020, nearly a full year before the March 2021 STI compensation payments were due to be made by the Company.[106]

16 TAC § 25.246 (b)(1)(B) allows electric utilities operating outside of the Electric Reliability Council of Texas region of the state, like SWEPCO, to use initial estimates of costs for inclusion in rate base, as long as actual information is submitted during an update period that ends no later than 30 days prior to the filing of the electric utility's rate proceeding.[107] SWEPCO did not file updated information 30 days prior to the Company's rate proceeding being filed and could not do so since the STI compensation payments were not made until March 2021, five months following the filing of the Company's rate case.[108] SWEPCO, therefore, does not qualify for the limited exception to use initial estimates in rate base under 16 TAC § 25.246 (b)(1)(B).

The 25% of SWEPCO's proposed STI compensation associated with 2020 performance, and paid in March of 2021, represented estimates of future payments that are not part of the historical test year and are not a known and measurable adjustment following the test year. Therefore, OPUC recommends that the ALJs exclude the 25% of SWEPCO's proposed STI compensation related to March 2021 estimated payments based on 2020 performance. SWEPCO's STI compensation should instead be based 100% on the 2019 amounts actually paid in March of 2020.

ii. STI Payments for Union Employees

OPUC opposes SWEPCO's inclusion of financially based STI compensation for union employees in the Company's base rates.[109] SWEPCO proposes to include financially based STI

---

[106] SWEPCO Ex. 3 (Direct Testimony of Malcolm A. Smoak) at 6, Footnote 2.

[107] 16 TAC § 25.246 (b)(1)(B).

[108] *See* OPUC Ex. 1 at 37:11 – 14. *See also* SWEPCO Ex. 3 at 6, Footnote 2.

[109] OPUC Ex. 39 (SWEPCO Response to OPUC RFI 1-15) at Attachment 3.

compensation for its union employees under Public Utility Regulatory Act ("PURA") § 14.006,[110] which states,

> "The commission may not interfere with employee wages and benefits, working conditions, or other terms or conditions of employment that are the product of a collective bargaining agreement recognized under federal law. An employee wage rate or benefit that is the product of the collective bargaining is presumed to be reasonable."[111]

SWEPCO's reliance on PURA § 14.006 is mistaken for two reasons. First, the exclusion of financially based performance measures from STI compensation is based on long-standing Commission precedent.[112] While PURA § 14.006 states that the Commission may not interfere with collectively bargained wages, rates, or benefits,[113] SWEPCO's union agreement with the International Brotherhood of Electrical Workers ("IBEW") does not specifically guarantee that financially based incentive compensation will be provided to its union employees, but instead only provides its union employees with the right to participate in the American Electric Power

---

[110] SWEPCO Ex. 46 (Rebuttal Testimony of Andrew R. Carlin) at 2:21 – 3:7.

[111] PURA § 14.006.

[112] *See: Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FOF Nos. 129-135 (Mar. 19, 2018); *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing at 5-6, FOF Nos. 83A-84A (Feb. 23, 2016); *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Order on Rehearing at 13, FOF No. 147 (Mar. 6, 2014); *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896, Order on Rehearing at 5, 7-8, FOF Nos. 60-61, 128-133 (Nov. 2, 2012); *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 33309, Order on Rehearing at FOF No. 82 (Mar. 4, 2008); *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 28840, Order at FOF Nos. 164-70 (Aug. 15, 2005).

[113] PURA § 14.006

Company Wide Incentive Plan.[114] The Company's union agreement became effective on April 1, 2018.[115] The Commission's precedent for excluding financially based incentive compensation from STI compensation awards goes back to at least 2005.[116] The union agreement between IBEW and SWEPCO was executed on April 1, 2018, therefore both parties should have had knowledge that financially based STI compensation should not be included in the Company's STI compensation awards. Therefore, the Commission did "not interfere with employee wages and benefits, working conditions, or other terms or conditions of employment that are the product of a collective bargaining agreement recognized under federal law"[117] since the union employees' wages, benefits, or conditions of employment did not exist at the time the Commission established its precedent not to include financially based incentive compensation in STI compensation awards. Therefore, it would be unreasonable to assume that the inclusion of the right to financially based STI compensation within a union agreement when pre-existing Commission precedent bars the inclusion of financially based incentive compensation in a utility's rates.

Second, the Company's union agreement fails to identify, with any specificity, the union employees' right to financially based incentive compensation.[118] OPUC does not oppose the Company's ability to freely contract with its union employees, including the union employees' ability to receive financially based incentive compensation. OPUC, however, believes that the cost of financially based incentive compensation should not be passed onto SWEPCO's customers.

---

[114] OPUC Ex. 40 (SWEPCO Response to OPUC RFI 2-11, Attachment 1 at 52). ("(a) Employees shall be permitted to participate in the American Electric Power Company wide Incentive Plan (CIP).")

[115] OPUC Ex 1. at 39:13 – 14.

[116] *See*: *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 28840, Order at FOF Nos. 164-70 (Aug. 15, 2005).

[117] PURA § 14.006.

[118] OPUC Ex. 40.

As OPUC witness Ms. Cannady provides "[t]he Company is still free to make contracts with unions and pay union affiliated employees according to those contracts, as long as STI compensation costs that are based on financial performance measures are not passed on to the Company's Texas retail ratepayers."[119] Because the union employees' right to financially based STI compensation was not specifically guaranteed in the Company's union agreement and given the Commission's well-established precedent of excluding financially based incentive compensation from a utility's rates,[120] OPUC does not believe that the Company should be allowed to recover financially based STI compensation under PURA § 14.006. Accordingly, OPUC recommends that the ALJs remove the financially based STI compensation for the union employees from SWEPCO's rates.

3. Severance Costs

OPUC recommends the denial of $767,100 in severance costs for SWEPCO during the test year and a reduction of severance costs incurred by AEPSC and charged to SWEPCO from the Company's requested $1,460,876 to $824,300.[121] According to OPUC witness Ms. Cannady, SWEPCO's claimed levels of severance pay experienced a dramatic increase during the test year and do not appear to be justifiable levels for recovery in the Company's rates.[122] SWEPCO paid

---

[119] OPUC Ex. 1 at 40:15 – 41:2.

[120] *See: Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FOF Nos. 129-135 (Mar. 19, 2018); *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing at 5-6, FOF Nos. 83A-84A (Feb. 23, 2016); *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Order on Rehearing at 13, FOF No. 147 (Mar. 6, 2014); *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896, Order on Rehearing at 5, 7-8, FOF Nos. 60-61, 128-133 (Nov. 2, 2012); *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 33309, Order on Rehearing at FOF No. 82 (Mar. 4, 2008); *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 28840, Order at FOF Nos. 164-70 (Aug. 15, 2005).

[121] OPUC Ex. 1 at 43.9 – 44:16.

[122] *Id.* at 43:13 – 14.

$0 in severance pay in both calendar year 2017 and 2018.[123] As a result, OPUC recommends removal of the $767,100 reported by SWEPCO during the test year since it is atypical and unlikely to represent normal levels of severance costs.[124] Additionally, AEPSC's charged severance costs to SWEPCO experienced a large increase during the test year relative to calendar year 2017 and 2018, increasing from less than $550,000 for the two years prior to $1,460,876 during the test year.[125] As with SWEPCO's abnormal severance costs, OPUC does not believe the $1,460,876 amount billed during the test year is representative of normal severance costs for ratemaking purposes.[126] Accordingly, OPUC recommends that the ALJs remove SWEPCO's $767,100 in severance costs entirely and use an average of AEPSC's three years of severance costs to calculate the allowable severance costs, which equates to $824,300 total.[127] This represents a company-wide reduction of $1,403,7051 to SWEPCO's requested amount of severance costs and $525,497 on a Texas retail jurisdiction basis.[128]

E. Purchased Capacity Expense

Texas Industrial Energy Consumers ("TIEC") witness Ms. Billie LaConte requests the imputation of a portion of the energy costs of SWEPCO's wind Purchase Power Agreements ("PPAs") to capacity charges and costs in the current docket.[129] OPUC opposes TIEC's proposal to impute energy-related costs to capacity.[130]

---

[123] *Id.* at 44:3 – 4.

[124] *Id* at 44:10 – 11.

[125] *Id.* at 43:18 – 44:5.

[126] *Id.* at 44:5 – 7.

[127] *Id.* at 44:8 – 14.

[128] *Id.* at 44:14 – 16.

[129] TIEC Ex. 4 (Redacted Direct Testimony of Billie S. LaConte) at 26:11 – 16.

[130] OPUC Ex. 60 (Cross-Rebuttal Testimony of Tony M. Georgis, P.E.) at 8 – 12.

First, the overall effect of moving the Company's wind PPA costs from energy to capacity costs in base rates would be to shift costs from large industrial and commercial customers to residential and small commercial customers.[131] As discussed in greater detail below, the residential customer class is already paying at cost of service under SWEPCO's proposed rates, meaning that the residential class will pay exactly what it costs to provide service, while the large industrial customer class is paying under cost of service or less than what it costs to provide service.[132] TIEC's proposal to impute capacity from SWEPCO's wind PPAs will therefore move the residential customer class out of cost of service and further increase the subsidization of the large industrial customer class at the expense of the residential customer class.[133]

Second, the Commission has historically treated SWEPCO's wind PPAs as energy-related costs that are appropriately recovered in a utility's fuel reconciliation proceeding.[134] As noted by OPUC witness Mr. Tony Georgis, all of the wind PPAs at issue came into service on or before 2013,[135] meaning that there has been ample opportunity to impute the costs of the Company's wind PPAs, if the Commission felt it would be appropriate to do so. TIEC witness Ms. LaConte points to an El Paso Electric Company ("EPE") case involving the imputation of capacity from EPE's solar PPAs as proof of the Commission's acceptance of the practice.[136] However, the referenced EPE case in Docket No. 44941 was a settled case and offers no precedential value regarding the imputation of capacity from PPAs.[137]

---

[131] *Id.* at 10:14 – 17.

[132] SWEPCO Ex. 32 (Direct Testimony of Jennifer L. Jackson) at Exhibit JLJ-1 at 3.

[133] *See* OPUC Ex. 60 at 10:14 – 17. *See also* SWEPCO Ex. 32 at Exhibit JLJ-1 at 3.

[134] SWEPCO Ex. 6 at 35:9 – 13.

[135] OPUC Ex. 60 at 8:9.

[136] TIEC Ex. 4 at 28:17 – 29:4.

[137] *Application of El Paso Electric Company to Change Rates*, Docket No. 44941, Order at 15 (Aug. 25, 2016). ("Entry of this Order consistent with the amended and restated agreement does not indicate the Commission's

Third, as explained by OPUC witness Mr. Georgis, it is not industry practice to impute capacity to energy-based contracts, because the imputation of capacity for energy charges violates cost causation principles.[138]

> SWEPCO does not incur capacity (i.e., kW) costs associated with the Company's wind generation PPAs. SWEPCO compensates the owners of the wind generation on a dollar per kWh ("$/kWh") delivered basis. Therefore, SWEPCO does not make capacity-related payments for the Company's wind generation PPAs. Allocating an energy-related cost, such as the wind generation PPAs, to customer classes using a demand-related allocation factor, misaligns the cost causation to SWEPCO with the cost allocation to the customer classes...
>
> Industry practice is to align how costs are incurred (i.e., cost causation) with how those same costs are allocated to the customer classes (i.e., cost allocation). Thus, the way in which SWEPCO incurs the costs (i.e., capacity-related or energy-related costs) should align with the way in which those same costs are allocated to the customer classes. In the case of the wind generation PPAs in which SWEPCO incurs costs based on the energy delivered to the Company, those same costs should be allocated to customer classes based on the energy consumed by the customer class.[139]

Fourth, in arguing for the imputation of capacity from wind PPAs, TIEC is attempting to conflate capacity requirements and methodologies for imputing capacity in reserve margin calculations in the Southwest Power Pool ("SPP") market [140] with a Commission methodology for imputing capacity for ratemaking purposes, which is not an apples-to-apples comparison.[141] Additionally, TIEC's eagerness to look to the SPP market for supporting arguments seems to contradict their position regarding behind the meter generation, where they oppose SWEPCO's

endorsement or approval of any principle or methodology that may underlie the amended and restated agreement. Entry of this Order shall not be regarded as precedent as to the appropriateness of any principle or methodology underlying the amended and restated agreement.").

[138] OPUC Ex. 60 at 8:15 – 9:6.

[139] *Id.* at 11:12 – 12:10.

[140] TIEC Ex. 4 at 27:8 – 13.

[141] OPUC Ex. 60 at 10:7 – 10.

interpretation and use of SPP requirements to justify the Company's treatment of behind the meter generation.[142] Therefore, TIEC, on one hand, is attempting to keep SPP market rules and practices out of this proceeding, while simultaneously relying on SPP market rules and practices to support their position when its advantageous for them in this proceeding. OPUC turns to the testimony of TIEC member[143] Eastman Chemical witness Mr. Ali Al-Jabir and his discussion regarding behind the meter generation for an illustrative statement: "I conclude that SWEPCO's proposal is not required under the SPP Tariff, is inconsistent with proper ratemaking principles, and contradicts the principles of cost causation."[144] This same conclusion is applicable to TIEC's imputed capacity proposal.

Accordingly, OPUC requests that the ALJs reject TIEC's imputed capacity proposal, because the resulting shift in costs would: (1) throw the residential customer class out of balance by moving the residential customer class to pay in excess of cost of service, (2) further subsidize the large industrial customer class at the expense of the residential customer class, (3) alter the historical treatment of SWEPCO's wind PPAs, (4) violate cost causation principles, and (5) conflate SPP's reserve margin needs with the Commission's ratemaking process.

VI. Functionalization and Cost Allocation [PO Issues 4, 5, 52, 53, 55, 56, 57, 58]

B. Class Allocation [PO Issues 53, 58]

1. Company Class Allocation Proposal

OPUC does not oppose SWEPCO's requested class allocations, because SWEPCO's proposal moves all rate classes closer to their true cost of service. OPUC's only request regarding

[142] TIEC Ex. 1 at 13:1 – 30:18.

[143] OPUC Ex. 63 (Texas Industrial Energy Consumers' List of Participating Members).

[144] Eastman Ex. 1 (Direct Testimony of Ali Al-Jabir) at 27:11 – 12.

the Company's class allocation proposal is to apply OPUC's revenue requirement adjustments to SWEPCO's proposed cost of service model.[145]

16 TAC § 25.234(a) states that rates "...shall be based on cost".[146] However, as noted by Staff witness Mr. Adrian Narvaez, the Commission has made exceptions when the movement to cost would be too drastic or harmful to a particular customer class.[147] As shown in the testimony of SWEPCO witness Ms. Jennifer Jackson, attached Exhibit JLJ-1, on page 2, in the column labeled "Present Relative Rate of Return," the residential customer class's current relative rate of return under present rates is 1.06.[148] Ms. Jackson explains that a value of 1.0 is the equivalent to being at cost.[149] As further explained by Nucor Steel witness Mr. James W. Daniel, "[a]n RROR [Relative Rate of Return] of 1.0 represents unity, meaning that a particular class is neither over- nor under-recovering that class's cost of service. An RROR above 1.0 means that a particular class is over-recovering its cost of service, or is subsidizing other customer classes, and an RROR below 1.0 means that a particular customer class is under-recovering its cost of service, or is subsidized by other customer classes."[150] Because the residential customer class relative rate of return is in excess of 1.0 at 1.06, this means that residential customers are currently paying approximately 6% over cost, while the large industrial customer class pays 0.87 (13%) under cost.[151] SWEPCO's proposed revenue distribution for future rates moves the residential customer class to cost at a

---

[145] OPUC Ex. 57 (Direct Testimony of Tony M. Georgis) at 5:2 – 8.

[146] 16 TAC § 25.234(a).

[147] Staff Ex. 4 (Direct Testimony of Adrian Narvaez) at 12:13 – 17.

[148] SWEPCO Ex. 32 (Direct Testimony of Jennifer L. Jackson) at Exhibit JLJ-1, at 2.

[149] SWEPCO Ex. 32 at 11:13.

[150] Nucor Ex. 1 (Direct Testimony of James W. Daniel) at 8:17 – 21.

[151] SWEPCO Ex. 32 at Exhibit JLJ-1, at 2.

relative rate of return of 1.0, while still leaving the large industrial customer class 7% under cost at a relative rate of return of 0.93 (1.0 when combined with the commercial class).[152]

2. COVID-19 Pro-Forma Adjustment

East Texas Salt Water Disposal District's ("ETSWD") proposal to include a pro-forma adjustment for COVID-19[153] would shift costs from the large industrial customer class, which is already under cost even under SWEPCO's proposed new rates, to the residential customer class that is already at cost.[154] In addition, as noted by OPUC witness Mr. Tony Georgis, a COVID-19 pro-forma adjustment is not a known and measurable adjustment that reflects conditions likely to prevail going forward in the future.[155] The bulk of the shifts in behavior during the COVID-19 pandemic were the result of state and local restrictions on movement and normal business operations.[156] Many of those restrictions are now being either lessened or removed entirely.[157] Mr. Georgis stated in his Cross-Rebuttal Testimony that:"[b]ecause the change in energy consumption during the COVID-19 pandemic is an anomaly, uncertain, temporary, and not reflective of normal SWEPCO operations, it would be inappropriate to assume that the effects of the COVID-19 pandemic are a known and measurable change to the Company's test year billing determinants."[158]

---

[152] *Id.* at Exhibit JLJ-1, at 3.

[153] ETSWD Ex. 1 (Direct Testimony of Kit Pevoto) at 5:10 – 13.

[154] SWEPCO Ex. 32 at Exhibit JLJ-1, at 3.

[155] OPUC Ex. 60 at 5:8 – 14.

[156] *Id.* at 5:14 – 19.

[157] *Id.* at 5:19 – 20.

[158] *Id.* at 6:1 – 4.

OPUC also notes that there is Commission precedent regarding the consideration of the COVID-19 pandemic in an electric utility's proceeding.[159] In Docket No. 50227, the City of El Paso opposed EPE's certificate of convenience and necessity ("CCN") application for a new gas plant on the grounds that the effects of the COVID-19 pandemic could negate the need for additional generation capacity from EPE's proposed new gas plant.[160] The ALJs stated in the Proposal For Decision ("PFD") that "[w]hile COVID-19 has since caused significant disruptions to economic and other human activity, whether this will lead to material reductions in EPE's long-term demand remains no more than speculation."[161] The Commission ultimately agreed with the ALJs and adopted their position in the PFD in approving EPE's CCN application for the new gas plant.[162] Accordingly, OPUC recommends that the ALJs reject ETSWD's pro-forma COVID-19 adjustment, because the proposal would move the residential and industrial customer classes further away from cost.[163] The effects of the COVID-19 pandemic are temporary and unlikely to persist in the future.[164] Commission precedent recognizes the speculative nature of relying on future COVID-19 impacts in electric utility proceedings.[165]

XI. Conclusion

For the reasons stated herein and discussed in the testimonies of OPUC's expert witnesses, OPUC respectfully requests that the ALJs adopt and incorporate OPUC's recommendations into

---

[159] *See*: *Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277, Final Order (Oct. 16,2020).

[160] OPUC Ex. 60 at 6:5 – 11. *Citing* Docket No. 50227, Direct Testimony of Scott Norwood (May 5,2020).

[161] Docket No. 50227, PFD at 24 (Sep. 3,2020).

[162] Docket No. 50227, Final Order (Oct. 16,2020).

[163] SWEPCO Ex. 32 at Exhibit JLJ-1, at 3.

[164] OPUC Ex. 60 at 6:1 – 4.

[165] *See* Docket No. 50227, PFD at 24 (Sep. 3,2020). *See also* Docket No. 50227, Final Order (Oct. 16, 2020).

the PFD in this proceeding. OPUC further asks to be granted any other relief to which it may be entitled.

Respectfully submitted,

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276

Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402
Tucker Furlow
Senior Assistant Public Counsel
State Bar No. 24060897
Chris Ekoh
Senior Managing Public Counsel
State bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 787112397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
zachary.stephenson@opuc.texas.gov
tucker.furlow@opuc.texas.gov
chris.ekoh@opuc.texas.gov
opuc_eservice@opuc.texas.gov

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 17th day of June 2021, by facsimile, electronic mail, and/or first class, U.S. Mail.

Zachary Stephenson